

# [EXTERNAL] Lost Trail National Wildlife Refuge Easement

Dorian Boling <dorianboling@gmail.com>

Sat 10/10/2020 2:50 PM

To: Tempel, Kris <ktempel@mt.gov>;

Dear Lost Trail and FWP,

I support this. This land is a value to hunters and is very important to make sure there is access to the public, for hunters and hikers. I just wish you could acquire more land. I hope there is going to be no additional open driving roads, and by doing this the loggers will not take advantage and let themselves and vehicles in during hunting season to " work" and either scare game off from hunters or hunt the intended game with the ease of a vehicle to get it out. seeing this year I have already seen vehicles driving on the south gated road at 5-7 am and as far as I can see there is no logging going on at this time It would be nice to have a few other access points for those that get the opportunity to hunt predators seeing the Lost Trail southern road can not be used to take predators out on. There is a lot of private land around this area and I appreciate FWP working hard to keep private landowners from blocking places .

thank you for your time,

Sincerely,

Dorian Boling

# Public Comment: Lost Trail Conservation Easement Draft Environmental Assessment

seyerkes@gmail.com

Sun 10/11/2020 8:46 PM

To: Tempel, Kris <ktempel@mt.gov>; Burton, Stevie <Stevie.Burton@mt.gov>;

Name: Sarah Yerkes

City: Kalispell

I am in support of the lost trail conservation easement.

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This e-mail was generated from the 'Lost Trail Conservation Easement Draft Environmental Assessment' Public Notice Web Page.

# Public Comment: Lost Trail Conservation Easement Draft Environmental Assessment

psimmons100@gmail.com

Thu 10/15/2020 11:33 AM

To: Tempel, Kris <ktempel@mt.gov>; Burton, Stevie <Stevie.Burton@mt.gov>;

Name: Patricia Simmons

City: Bozeman

I support the Lost Trail Conservation Easement! Thank you for working on this!

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This e-mail was generated from the 'Lost Trail Conservation Easement Draft Environmental Assessment' Public Notice Web Page.

# Public Comment: Lost Trail Conservation Easement Draft Environmental Assessment

lrui50@gmail.com

Fri 10/9/2020 5:17 PM

To: Tempel, Kris <ktempel@mt.gov>; Burton, Stevie <Stevie.Burton@mt.gov>;

Name: Lloyd d ruis  
City: BILLINGS  
I say buy it and more.

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This e-mail was generated from the 'Lost Trail Conservation Easement Draft Environmental Assessment' Public Notice Web Page.

# Public Comment: Lost Trail Conservation Easement Draft Environmental Assessment

otisranch@wispwest.net

Sat 10/10/2020 7:07 AM

To: Tempel, Kris <ktempel@mt.gov>; Burton, Stevie <Stevie.Burton@mt.gov>;

Name: Bert Otis

City: Emigrant

Dear Fish Wildlife & Parks Commission,

I support Alternate A, the purchase of a CE on the Lost Trail Land. As for the mineral rights, I know someone else owns most of them, but it hasn't been profitable to do anything with them for the last 100 years, so I doubt if anything will happen with them. If it does then it does, at least this CE will let the public enjoy the land and protect the habitat for now.

Thank You Bert Otis

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This e-mail was generated from the 'Lost Trail Conservation Easement Draft Environmental Assessment' Public Notice Web Page.

# Public Comment: Lost Trail Conservation Easement Draft Environmental Assessment

dieselsubs@msn.com

Sat 11/7/2020 6:40 AM

To: Tempel, Kris <ktempel@mt.gov>; Burton, Stevie <Stevie.Burton@mt.gov>;

Name: George Johnson

City: Kalispell

Any additionnal public access is good. I drive by the area to go fishing and enjoy seeing the wild life, Do not recreate there because of limited access. I would use the new access if approved. It is a good thing . I am in favour of it.

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This e-mail was generated from the 'Lost Trail Conservation Easement Draft Environmental Assessment' Public Notice Web Page.

# Public Comment: Lost Trail Conservation Easement Draft Environmental Assessment

jsjvash@montanasky.us

Fri 11/6/2020 12:00 PM

To: Tempel, Kris <ktempel@mt.gov>; Burton, Stevie <Stevie.Burton@mt.gov>;

Name: Jim Vashro

City: Kalispell

Comments on Lost Trail Conservation Easement Draft EA

Flathead Wildlife, Inc. gives full support to Alternative A, the Proposed Action to purchase a Conservation Easement (CE) on 7,265 acres of Southern Pines Plantation immediately adjacent to and south of the Lost Trail National Wildlife Refuge (NWR) in an area commonly known as Dredger Ridge. Lost Trail NWR is the focal point for two important elk herds as well as habitat for black and grizzly bears, whitetail and mule deer and a variety of other wildlife as well as a migratory corridor. Dredger Ridge is an important walk-in hunting area, providing up to 400 hunter days annually.

Lost Trail NWR is predominantly grasslands with limited cover for wildlife security and thermal refuge. Adjacent Dredger Ridge is 85% timberlands and therefore complements the Refuge goals for sustaining wildlife. Maintaining the proposed proposed Lost Trail CE area in its present condition more than doubles the effectiveness of the Lost Trail NWR and the two areas combined are critical for maintaining healthy wildlife populations in the overall area.

The proposed CE area is managed for timber production to support the local economy. Areas to the south including Lost Prairie, Pleasant Valley Fisher River drainage and lands north of Highway 2 have been subdivided with a concurrent loss of public access, timber production and wildlife security.

Flathead Wildlife, Inc. salutes first Weyerhauser and now Southern Pines Plantation for recognizing the critical value of this property and working with FWP to maintain those values for perpetuity. Flathead Wildlife, Inc. salutes FWP for identifying this area and working through the mechanics to complete a conservation easement that will serve both wildlife and sportsmen and women for generations.

Jim Vashro, President

Flathead Wildlife, Inc.

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This e-mail was generated from the 'Lost Trail Conservation Easement Draft Environmental Assessment' Public Notice Web Page.

November 2, 2020

Montana Fish, Wildlife and Parks  
Attn: Kris Tempel  
490 N Meridian Road  
Kalispell, MT 59901

*Re Lost Trail Conservation Easement Draft Environmental Assessment*

*The Montana Sportsmen Alliance (MSA), a statewide group of advocates for the public trust, place significant value on our public land and waters, our fish and wildlife resources and public access to those trust resources. We recognize the important role that private lands and landowners play in supporting these resources and strongly endorse collaborative approaches designed to provide long-term conservation of these landscapes that are Montana. We very much appreciate the opportunity to provide comment to a public process in that regard. The Lost Trail Conservation Easement Draft Environmental Assessment speaks directly to the values outlined above.*

*We have reviewed the Draft Assessment and related attachments. We find the document complete and succinct. The proposal to put in place a perpetual easement with SPP Montana, LLC (SPP) on 7,256 acres of timberland and wildlife habitat in northwestern Montana has significant merit. The property's proximity to the Lost Trail National Wildlife Refuge (USFWS) and to nearby Wetland Reserve Program (NRCS) easements, provides valuable ecological and recreational benefits to a conservation area of importance. The proposed action represents a collaborative effort between SPP, The Trust for Public Lands (TPL) and MFWP and utilizes a suite of funding resources including the Forest Legacy Program administered by the US Forest Service (USFS). As described it seeks to conserve important fish and wildlife habitat for a diversity of species, to continue sustainable commercial forest management and to maintain compatible, non-motorized public recreational access into the future. We believe the use of a Multi-Resource Management Plan as a separate attachment but required component of the proposed easement is good business and will provide for appropriate management flexibility over time.*

*As a grassroots organization of Montanans, MSA strongly supports the Proposed Action Alternative contained in the Draft Assessment. We recognize that a decision notice needs to be issued by the Region 1 Supervisor to put this action in front of the FWP Fish and Wildlife Commission for consideration. We endorse that course of action and encourage MFWP to move forward with the purchase of the proposed Lost Trail Conservation Easement.*

*Thanks you for the opportunity to comment on this important proposed action.*

*MSA Leadership Group,  
Joe Perry – Conrad*

*John Borgreen – Great Falls*  
*JW Westman – Park City*  
*Robert Wood – Hamilton*  
*Steve Schindler – Glasgow*  
*Sam Milodragovich – Butte*  
*Jeff Herbert - Helena*  
*Don Thomas – Lewistown*  
*Doug Krings - Lewistown*  
*Laura Lundquist – Missoula*  
*Dale Tribby – Miles City*



Protecting Montana's wildlife,  
land, waters and hunting & fishing  
heritage for future generations.



November 04, 2020

Montana Fish, Wildlife, & Parks  
Region 1  
Kris Tempel  
490 North Meridian Road  
Kalispell, MT 59901

RE: Lost Trail Conservation Easement Draft EA

The Montana Wildlife Federation (MWF) is our state's oldest and largest state-based wildlife conservation organization. We were formed in 1936 when hunters joined landowners to restore depleted wildlife in Montana, and for 84 years we have worked on key issues affecting wildlife, habitat and access. Likewise, Flathead Wildlife Incorporated (FWI) has advocated for wildlife conservation, hunting, and angling within the Flathead Valley for over 60 years. Together, our organizations represent a significant portion of the wildlife interests near the proposal area.

The landscape surrounding, and within, the proposed Lost Trail Conservation Easement offers high quality habitat for many characteristic Montana plants and wildlife. Within this region, elk, whitetail deer, moose, black bear, grizzly bear, and several waterfowl species are abundant. Our members and affiliates enjoy this landscape for the amazing hunting, angling, bird-watching, hiking, and camping found here.

Our mission is to protect wildlife, public access, and quality wildlife habitat. The primary threats to this mission include, but are not limited to, climate change, habitat fragmentation, habitat degradation, and loss of public lands. The following comments will primarily be regarding the impacts of the Lost Trail Conservation Easement to our mission and how it addresses threats to wildlife.

The recent Weyerhaeuser land sale has solidified the threat of development to lands in western Montana. Conservation actions, such as this proposal and the adjacent U.S. Fish & Wildlife Service (FWS) conservation easements are essential to maintaining public access on this extensive portion of Montana.

Roughly 97% of the project area is held by Southern Pine Plantation LLC (SPP), a privately owned timber company. While this company currently allows public access for hunting and recreation on their lands, there is a significant chance that this land will be subdivided and sold in the near future. With the subdivision of this land will come significant reductions in habitat connectivity and quality in addition to the loss of public access to these lands.

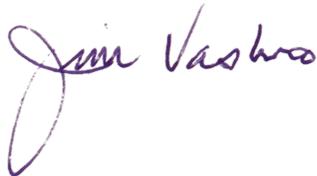
Conservation easement acquisition within this project boundary is essential to maintaining this landscape for all Montanans. Easements will allow public agencies to establish landscape connectivity while ensuring that the public has access to these critical lands.

MWF and FWI strongly support the proposed Lost Trail Conservation Easement and we thank FWP for the opportunity to voice support of this project. If we can be of any assistance, please contact Eric Clewis, MWF's Western Montana Field Coordinator, at [eclewis@mtwf.org](mailto:eclewis@mtwf.org).

Sincerely,



Frank Szollosi  
Executive Director  
Montana Wildlife federation



Jim Vashro  
President  
Flathead Wildlife Incorporated



**BACKCOUNTRY  
HUNTERS & ANGLERS**  
MONTANA

Montana Chapter of Backcountry Hunters & Anglers  
PO Box 9257  
Missoula, MT 59807

Lost Trail Conservation Easement  
Montana Fish, Wildlife & Parks  
Attn: Kris Tempel  
490 N. Meridian Rd  
Kalispell, MT 59901  
Email: [ktempel@mt.gov](mailto:ktempel@mt.gov)

RE: Proposed Conservation Easement on Timberland Near Lost Trail National Wildlife Refuge

The Montana Chapter of Backcountry Hunters & Anglers submits this comment in support of the proposed conservation collaborative effort involving SPP, The Trust for Public Land (TPL), and Fish, Wildlife & Parks (FWP). The Montana Chapter's roughly 3,000 dues-paying members have a keen interest in this conservation easement, as our organization is dedicated to protecting the value that wild lands, wildlife and wild fish bring to our great state. We strive to protect large parcels of backcountry fish and wildlife habitat, as well as the opportunity for fair chase hunting and fishing experiences.

This unique land is within the newly proposed U.S. Fish and Wildlife Service (USFWS) Lost Trail Conservation Area, which we also strongly support. By authorizing the USFWS to acquire up to 100,000 acres of conservation easements from willing sellers within the designated boundary, this project will serve to create critical wildlife habitat protection and landscape connectivity, as well as permanent public access and associated recreational opportunities. This will provide invaluable resources to Montanans, and particularly those in Flathead and Lincoln counties. As FWP is aware, population growth in Flathead County has been dramatic over the last several decades. Enlargement and development of public access and USFWS land holdings will only serve to assist with distribution of impacts from growing public use and enhancement of the natural resource user experience.

Of particular significance with this acquisition is the multi-use nature of the property. As USFWS notes in its Draft EA, the proposed Conservation Area would not just provide the opportunity for acquisition of conservation easements such as this one proposed by FWP - providing valuable wildlife habitat and connectivity corridors - but will also provide valuable access for hunters and anglers in perpetuity. FWP notes that the proposed project would protect habitat for two large elk herds, and includes the north slope of Dredger Ridge, a favorite walk-in elk hunting area that currently provides over 400 days of public hunting access. At the same time, USFWS notes that the Proposed Action will also allow sustainable forest management practices to continue. This is an important component for the local economy and will help bring about broad supports across the public spectrum. This type of compromise exemplifies what Montanans want to see from their land management agencies.



[WWW.BACKCOUNTRYHUNTERS.ORG/MONTANA\\_BHA](http://WWW.BACKCOUNTRYHUNTERS.ORG/MONTANA_BHA)  
[MONTANA@BACKCOUNTRYHUNTERS.ORG](mailto:MONTANA@BACKCOUNTRYHUNTERS.ORG)

Although costs of acquiring these private easement rights will surely be high, Montana BHA supports the collaborative nature of these types of public-private partnerships, and in particular, the proposal to use grant monies from the U.S. Forest Service Forest Legacy Program, FWP's Habitat Montana program, and the Fish and Wildlife Conservation Trust. In addition, the extremely valuable nature of these ecologically important lands would surely entice further private development and habitat fragmentation. This opportunity cost makes this Proposed Action that much more beneficial to the public, as it will serve to not only provide continued public access, but also will permanently protect the biologically rich habitat that contributes to the abundance of diversity of terrestrial and aquatic wildlife in this area.

For all of these reasons, Montana BHA offers this comment in support of the FWP separate conservation easement proposal adjacent to the USFWS Lost Trail National Wildlife Refuge and within the boundary of the USFWS proposed Lost Trail Conservation Area, as currently proposed in the Draft EA published in September 2020.

Sincerely,

Graham Coppes, Montana Chapter Conservation Leader  
Molly VandeVoort, Flathead Board Member  
The Montana Chapter of Backcountry Hunters & Anglers



**Lost Trail Conservation Easement Environmental Assessment**  
**Public Hearing – via Zoom**  
**October 28, 2020 - 7:00 pm**

TRANSCRIPT OF PUBLIC COMMENT RECEIVED

Jim Vincent: "I live in Bozeman now, but used to work seasonally for the Fish and Wildlife Service a few years ago. I think this is a super cool thing, so just wanted to throw a quick comment out there about this being a really cool thing. When I first saw this, I think NBC Montana posted something about it. I was super excited to see something like this and that is why I am attending this Zoom meeting tonight. I think it's a really great thing, and I hope progress really continues on this. The whole ecosystem surrounding Lost Trail National Wildlife Refuge is super, super valuable to so many different species. Just for the record, this is something I think should definitely continue to go forward."

## **Lost Trail Conservation Easement Environmental Assessment Comments received via phone call**

### TRANSCRIPT OF PUBLIC COMMENTS RECEIVED

10/30/2020

Carol McCorman (Ronan): "I think that would be a wonderful idea. Things like this don't come around very often, and I think we should jump at the opportunity to obtain this property."

11/2/2020

Larry Ruffatto: "I think we should purchase an easement or a developer will buy and subdivide it."

11/2/2020

Brian Marotz: "Go for it!"

**WRH NEVADA PROPERTIES, LLC**  
**P.O. Box 376**  
**Rexburg, ID 83440**  
**(208) 351-6487**

November 6, 2020

Montana Fish, Wildlife & Parks  
490 N. Meridian Road  
Kalispell, MT 59901  
[ktempel@mt.gov](mailto:ktempel@mt.gov)  
(406) 751-4573 - Mobile  
(406) 752-5501 - Office

**VIA U.S. AND ELECTRONIC MAIL**

Attention: Kris Tempel

Reference: Draft Environmental Assessment for the Lost Trail Conservation Easement

Subject: Public Comment Period

Dear Ms. Tempel:

I am the Manager of WRH Nevada Properties, LLC, a Nevada limited liability company ("WRH"), which is the owner of approximately 823,000 acres of deeded real property interest, private Mineral Estate properties located in northwestern Montana.

It is my understanding that Montana Fish, Wildlife & Parks ("FWP"), The Trust for Public Land ("TPL"), and Southern Pine Plantations ("SPP") are currently engaged in negotiations for what is being referred to as the Lost Trail Conservation Easement Project (also known as the Dredger Ridge Conservation Easement), which aims to place a Conservation Easement over 7,274 acres of land immediately south of the existing Lost Trail National Wildlife Refuge located in Flathead County, Montana. Approximately 6,875.5 acres or approximately ninety-five percent (95%) of the real property proposed to be placed under the Lost Trail Conservation Easement are covered by WRH's deeded Mineral Estate.

**This correspondence is in response to FWP’s October 2020 Draft Environmental Assessment for the Lost Trail Conservation Easement and serves to put FWP, TPL, and SPP on formal notice that the proposed Lost Trail Conservation Easement is subject to WRH’s existing and dominant mineral rights.** The Montana Supreme Court has expressly held that the mineral estate and the remaining estate are not of equal dignity and that the mineral estate is the dominant estate under Montana law. (*Hunter v Rosebud County* (1989) 240 Mont. 194, 198.) Further, “Montana law permits the owner of a dominant mineral estate to use reasonably the surface estate in the production of the mineral.” (*Burlington Resources Oil & Co. LP v. Lang and Sons Inc.* (2011) 361 Mont. 407, 412; see also *Western Energy Co. V. Genie Land Co.* (1981) 195 Mont. 202, 209 [“It is obvious...that a mineral reservation carries with it implied rights of use of the surface which are not necessarily ‘exploring,’ ‘mining,’ or ‘extracting,’ but may be indirectly related to those activities”].)

Weyerhaeuser, through a sale now SPP, has never owned the deeded real property mineral interests on the subject WRH property. WRH will not allow any trespass or conversion of WRH’s mineral or surface entry rights, and WRH will not permit any conservation easements to be placed over WRH’s Mineral Estate that could in any way undermine WRH’s existing mineral or surface entry rights.

WRH’s deeded Mineral Estate originates from fee simple lands originally purchased by the Anaconda Copper Mining Company (“Anaconda”) from the Northern Pacific Railroad beginning in 1899. Anaconda and Big Blackfoot Milling Company subsequently sold and conveyed the surface estate while reserving the mineral estate in these lands through many transactions to many buyers which created many mineral deeds. Anaconda conveyed the surface estate in the lands relevant to this letter and the Lost Trail Conservation Easement (Dredger Ridge) to George E. Doll in 1912 and to timber company Champion International in 1972. In each case, Anaconda reserved to itself and all successors and assigns the real property Mineral Estate along with the right to access, explore for, and mine any and all mineral commodities present. In many of the conveyances, including the Champion International Deed, Anaconda also included surface “buy back” provisions, giving Anaconda, in addition to the rights provided by Montana Law, the right to repurchase the surface estate for purposes of mineral exploration and/or mining operations. Many of the transactions, in addition to reserving the Mineral Estate and surface “buy back” provisions, in some instances also reserved timber rights.

WRH legally succeeded to Anaconda’s deeded real property mineral interest, surface entry, and surface buyback rights when WRH acquired its approximately 823,000 acre Mineral Estate from CR Montana via a bankruptcy proceeding sale in 2016. Although we acknowledge that SPP has

the right to sell or grant SPP's surface estate to whomever SPP chooses, WRH wants all parties to be aware that no one but WRH can grant away any of WRH's legal rights to the deeded Mineral Estate and WRH's related surface entry and surface buyback rights. Please be advised that WRH will enforce these rights to the fullest extent of the law.

The many deeds that convey WRH its vast Mineral Estate are very different and quite exceptional from most mineral interest conveyance deeds since, as explained above, in most instances convey to WRH in addition to the deeded mineral interest, the right to "buy back" or repurchase the surface estate property for exploration or mining purposes. The opinion of WRH's attorneys and in discussion with special counsel for the Internal Revenue Service, when a third-party interest has been deeded the right to reacquire the surface estate, it would be impossible to guarantee perpetuity for purposes of a conservation easement.

The Draft Environmental Assessment for the Lost Trail Conservation Easement states that the Lost Trail Conservation Easement (Dredger Ridge) is within the newly proposed United States Fish and Wildlife Service Lost Trail Conservation Area. WRH has responded to the United States Fish and Wildlife Proposed Lost Trail Conservation Area Scoping Notice dated July 8, 2020, and Draft Land Protection Plan for the Establishment of the Lost Trail Conservation Area dated September 2020 and Draft Environmental Assessment for the Establishment of the Lost Trail Conservation Area dated September 2020, copies of said responses are included as attachments with this letter.

With the purchase of the 823,000 acre deeded Mineral Estate in 2016, WRH received a vast amount of mineral deed and mineral information for the Mineral Estate properties. Historically this information was unusable because it had been warehoused in a building at a reclaimed mine site, in boxes, on shelves, in desks and in file cabinets that contained hundreds of thousands of pages of mineral deed, mineral exploration data, maps, reports and other information pertaining to WRH's vast Mineral Estate. Mr. Charles "Casey" Ross with the help of six geology GIS interns spent years organizing and compiling all of the information into a very usable database with over 400 Gigabytes of data. The information dates from the late 1800's and includes more than a century's worth of mineral property information compiled by some of the world's largest mining companies that previously owned the Mineral Estate, other mining companies that were in joint venture with the Mineral Estate owners, and mining companies that leased property from the Mineral Estate owner for mineral exploration. The information, mapping, reporting and exploration data in the GIS database has always been held privately, is proprietary and adds significant value to the Mineral Estate properties. It would be very difficult, if not impossible,

to perform a substantiated and valid mineral interest remoteness study on the deeded WRH mineral property without this information. None of this information is in the public domain and would not be available to anyone attempting to perform a 'so remote as to be negligible' opinion. In fact, there is very little mineral information, if any, concerning the WRH Mineral Estate in the public domain since this property has been held privately for well over a century.

The Draft Environmental Assessment for the Lost Trail Conservation Easement states that the largest portion of funding for the Easement will be provided by USDA Forest Service Forest Legacy Program. It is WRH's understanding that the Forest Legacy Program Implementation Guidelines FS-1088 dated May 2017 require that during project development the State shall evaluate title and third-party interests. To date, WRH has never been contacted concerning the Lost Trail Conservation Easement even though WRH's attorney responded to the Montana Fish, Wildlife & Parks Scoping Notice on May 5, 2020, and explained that the proposed Lost Trail Conservation Easement is subject to WRH's existing and dominant Mineral Estate and with that response was provided a letter by Geologist Charles "Casey" M. Ross, explaining that there is significant potential for discovery of a wide array of metallic and industrial mineral interests on the proposed Conservation Easement property. Mr. Ross' evaluation is based on the proprietary information contained within the vast GIS database.

The Forest Legacy Program Implementation Guidelines state, "The minerals ownership must be determined before acquisition, and if there are severed mineral interests, then the outstanding mineral interests must be acquired to the extent possible. In the case where the mineral rights are not, or cannot be, acquired, a determination by a qualified geologist must be obtained as to the likelihood of mineral development (see Section 8 - Project Eligibility and Development for additional information on title and third-party interests). The acquisition can proceed if the possibility of mineral development is 'so remote as to be negligible'. If severed mineral rights cannot be acquired, and those severed rights pose a threat to surface disturbance (that is, the "remoteness" standard cannot be met), that portion of the property is not eligible. Limited (impact, footprint, duration) oil and gas extraction might be permissible if it is determined that the conservation values can be protected and the activity will not have negative impacts. Surface mining must be excluded from FLP tracts except for gravel sites in support of allowed activities on the property and, on a case-by-case basis, on adjacent properties where such uses are in support of those same conservation values, for example, reciprocal road-maintenance agreements for timber management."

Had WRH been contacted, as it appears the Forest Legacy Implementation Guidelines suggest, its geologist could have provided information pertaining to the valuable mineral interest potential that the Lost Trail Conservation Easement property includes. It appears that the Forest Legacy Implementation Guidelines require that the mineral property owner be contacted with regard to acquisition of the severed mineral interests and, if they cannot be acquired, then a qualified geologist must be obtained to determine the likelihood of mineral development. If it is determined that mineral development does not meet the “remoteness” standard, the property is not eligible for Forest Legacy funding.

The Draft Environmental Assessment for the Lost Trail Conservation Easement Subsection 1.6 Issues Raised During Public Scoping, Issue No. 12 Fish, Wildlife & Park Response states: “FWP acknowledges that conservation easements cannot restrict the existing rights of third-party owners of subsurface mineral rights underlying the property. In recognition of Montana law on this point, the proposed conservation easement under landowner rights provides: ‘[t]his Easement does not restrict any third parties owning or leasing any of the oil, natural gas, or any other mineral substances under the Land from a right of ingress or egress or prevent such third parties use and occupancy of the surface of the Land. While the conservation easement may not restrict a third-party mineral rights owner from developing the minerals underlying the property, the proposed easement does contain language providing, “Landowner and the Department shall confer to review the proposed activity and to determine proposals to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Subject to Montana Code Annotated §82-10-504, Landowner and the Department shall subsequently cooperate in an effort to encourage the third party to adopt recommended mitigating measures in the third party’s exploration and development activities.”

While WRH does have the third-party legal right to develop its subsurface mineral interest, a conservation easement and the interests promoted by conservation easements are directly adverse to the interests of the WRH deeded Mineral Estate. The proposed Lost Trail Conservation Easement would place negative restrictions or prohibitions on the type and magnitude of development and will impact the value of WRH’s Mineral Estate. Although the Landowner and the Department might try to encourage mitigating measures in the third party’s exploration and development activities, WRH would not be bound by any such conservation easement. WRH’s deeded Mineral Estate interests are senior and recorded many years prior to any provisions that may be contained in the proposed conservation easement for the Lost Trail Conservation Easement Area. The Montana Code Annotated §82-10-504 that is referenced appears to only be relevant to oil and gas developers or operators and WRH mineral interests do not include hydrocarbons.

The Draft Environmental Assessment for the Lost Trail Conservation Easement Subsection 1.6 Issues Raised During Public Scoping, Issue No. 13 Fish, Wildlife & Park Response states: “In May 2020, TPL and FWP had a consultant, HydroSolutions, conduct a minerals potential evaluation for the Lost Trail Conservation Easement area. That evaluation determined the ‘probability of extraction from the property, by surface or subsurface mining methods, of metallic and industrial minerals, construction materials, abrasives, petroleum products (oil and gas), coal resources, geothermal resources, and sand and gravel is so remote as to be negligible, within the meaning of section 170(h)(5)(B)(ii) of the Internal Revenue Code and its applicable regulations.’ Unless the mineral owner would like to share the information not publicly available, FWP has to assume that the consultant’s minerals potential report is correct.

Internal Revenue Code Section 170(h): National Perpetuity Standards For Federally Subsidized Conservation Easements *d. Mineral Restrictions* states: “Section 170(h) as originally enacted provided that, in the case of a contribution of any interest where there is a retention of a *qualified mineral interest* (defined as subsurface oil, gas, or other minerals and the right to access such minerals), the conservation purpose will not be treated as protected in perpetuity if at any time there may be extraction or removal of minerals by any surface mining method. This surface mining prohibition presented a problem for conservation easement donations with respect to land where the mineral estate had been severed from the surface estate. In some locations, separation of the estates was common and had occurred many years before the proposed donation of the conservation easement. In addition, in many cases the often unknown owners of the mineral estate were unlikely to exercise their extraction rights because either no known mineral interests existed or extraction of any known mineral interests was not commercially feasible. To permit landowners owning such severed estate lands to claim tax benefits for conservation easement donations, Congress amended section 170(h) in 1984 to create a special rule pursuant to which a deduction for the donation of a conservation easement as to severed estate lands would be allowed provided (1) the separation of the estates occurred before June 13, 1976, and (2) the possibility of surface mining occurring on the property (and consequent negative impact on the conservation purposes of the easement) was ‘so remote as to be negligible’. In other words, Congress created a special ‘so remote as to be negligible’ exception to the surface mining prohibition that applied to certain limited circumstances.

The Treasury Regulations, which were issued in 1986, incorporated the statute’s limited ‘so remote as to be negligible’ exception to the surface mining prohibition. The Treasury Regulations explain that determining whether the probability of surface mining is ‘so remote as to be negligible’ is a question of fact that must be made on a case-by-case basis, and relevant

factors to consider include geological, geophysical, or economic data showing either the absence of mineral interests on the property or the lack of commercial feasibility of surface mining at the time of the contribution. The Treasury Regulations also confirmed that, if the ownership of the surface and Mineral Estates first became separated after June 12, 1976, no deduction was allowed unless surface mining on the property was completely prohibited. In 1997, Congress amended section 170(h) again, this time to provide that the special ‘so remote as to be negligible’ exception to the surface mining prohibition applies to severed estate lands regardless of the date on which the two estates separated.

These mineral extraction provisions illustrate two important points. First, the ‘so remote as to be negligible’ rule involves an intensely factual case-by-case inquiry. Second, when Congress and the Treasury wish to provide a special ‘so remote as to be negligible’ exception to a specific requirement in the Code and Treasury Regulations, they do so expressly.”

On October 31, 2020, WRH requested the HydroSolutions Minerals Potential Evaluation for the Lost Trail Conservation Easement Area. On November 2, 2020, via email, Ms. Kris Tempel, Habitat Conservation Biologist, provided the HydroSolutions Minerals Potential Evaluation for the Lost Trail Conservation Project, Flathead County, Montana dated September 16, 2018, and HydroSolutions Supplemental Report Minerals Potential Evaluation for the Lost Trail Conservation Project, Flathead County, Montana dated May 19, 2020. Ms. Tempel’s email also stated “This is the only report we have in regards to mineral potential for this property.”

The HydroSolutions Minerals Potential Evaluation report states, “The minerals evaluation followed guidance and documents provided by the Forest Service including Region I Mineral Statement Guidelines, Bureau of Land Management (BLM) Manual 3060, and applied the BLM mineral potential classification system found in BLM Manual 3031.” These BLM Manuals set standards for assessing, classifying and reporting the potential for the occurrence of mineral interests on lands managed by the BLM. Specific procedures, mineral appraisals and evaluations requiring determinations or estimation of monetary value or market potential are beyond the scope of Manual Section 3031.

BLM Manual 3060 states that the reviewer is instructed to review the existing literature and unpublished data which covers the land or interest in the land that is under investigation. It appears Federal Government and Montana Government databases were reviewed for the development of the Minerals Potential Evaluation Report. This might be relevant when using BLM Manual 3031 standards for property owned by the BLM or other Federal Government

entities, where the BLM holds the mineral information for the property in question. As explained previously, the mineral interest data necessary to perform a minerals 'so remote as to be negligible' study for the WRH mineral property is held privately by WRH.

WRH personnel have never been contacted, though BLM Manual 3031 states that standards for completing an assessment should include contacting claimants and/or lessees. Instead the Minerals Potential Evaluation Report reads that discussions with the property manager and a forester familiar with the subject property confirm the findings observed during the field effort and fulfill the purpose of this geologic and mineral potential report. What geologic experience or mining expertise do the property manager or forester hold to give them the ability to determine whether there are mineral interests on this property? The Minerals Potential Evaluation Report also states "Ownership information was not provided but mineral rights are apparently split from some surface rights." It appears that the Mineral Deeds were not even reviewed by the author of the Minerals Potential Evaluation Report to determine what property and mineral rights the Mineral Deeds convey.

Section 4.3 of the Minerals Potential Evaluation report titled Locatable Minerals Activity states there were 88 lode or placer claims previously filed near the subject property with attachments. The fact that 88 lode or placer claims were filed is a good indicator of mineral interest potential. The Department of the Interior Bureau of Land Management Mining Claims list the name and address of the Claimant to be Molycorp Inc., Box 37, Louviers, Colorado. At the time, Molycorp Inc. was a large American Mining Corporation headquartered in Greenwood Village, Colorado and was traded on the New York Stock Exchange. Molycorp did not file 88 BLM Mining Claims without there being significant reason and potential for mineral interests. At the time, Molycorp Inc. and Cominco, another large mining corporation, in a large joint venture with Anaconda were exploring for zinc-lead-silver mineralization on the Federally claimed property and the private Anaconda property, now the WRH Mineral Estate property. A report commissioned by the U.S. Fish and Wildlife Service for the Lost Trail Conservation Easement Area and entitled Overview of Potential Surface Minerals Problem Areas for Lost Trail Acreage Compiled by Whitehall Geogroup, Inc., Whitehall, MT, Debra Hanneman, President, Submitted 07/28/2020 provides some additional information. The report states, "In my recent discussion with Mr. Jerry Zieg, a mining geologist who worked for Cominco American, Inc., shortly after their work was initiated in this general area, he said, '...the focus was on the Prichard Formation in which they were exploring for zinc-lead-silver mineralization. I believe they completed a geophysical survey and may have drilled one core hole. The area you describe is underlain by Prichard [Formation] - always a target terrain for Sullivan-type ZnPbAg deposits' (personal communication, 7/23/2020, with Mr. Jerry Zieg, now Senior Vice President, Tintina Montana Inc., Black Butte Copper Project, White Sulphur Springs, MT).

Ms. Hanneman continues, “a Sullivan-type deposit (zinc-lead-silver) is sediment hosted, with initial deposition occurring above a thermal anomaly in a marine intracontinental rift basin. The thermal feature propelled metal-rich, sulfur-poor brine circulation into fractures and breccia zones, thus producing sulfide mineralization (Campbell and Ethier, 1983; Lydon, 2004). Mr. Zieg’s statement cited above regarding the Proterozoic Prichard Formation always being a target terrain for Sullivan-type deposits is because this type of deposit is sediment hosted and therefore could occur wherever the Prichard Formation exists. Again, although the claims are now closed, the Prichard Formation does outcrop throughout the areas of concern (Harrison and others, 1992), and so remains a potential target terrain. The closing of many claims in the early 1980’s also coincided with a financial crash in the mining industry, and that may have negatively impacted the claim closure decisions rather than a lack of resource.” The Lost Trail Conservation Easement Area that includes the 7,256 acres of The Lost Trail Conservation Easement (Dredger Ridge), and the proposed Great Montana Project Conservation Easement are all underlain by the above mentioned Proterozoic Prichard Formation, a known highly mineralized target for Sullivan-type ZnPbAg deposits.

The referenced BLM Manual 3031 and 3060 guidelines require that a Minerals Specialist must analyze and complete the minerals evaluation report. Special counsel for the Internal Revenue Service have advised WRH that minerals remoteness opinions will be treated with the same high standards that a qualified appraisal is held and the certifying individual must demonstrate verifiable education and experience in valuing the type of property subject to the minerals remoteness study. The HydroSolutions Minerals Potential Evaluation for the Lost Trail Conservation Project and the HydroSolutions Supplemental Report give no resume or professional qualifications confirming that Mr. David Donohue, Senior Hydrologist, P.G., and Scott Wheaton, Geologist, are in fact qualified Minerals Specialists. A review of the HydroSolutions website shows that HydroSolutions provides mainly environmental services to the mining industry. Nowhere does the HydroSolutions website show there is an exploration geologist, economic geologist or mining engineer on staff, nor does it show past exploration or economic geologic projects. An economic analysis of the potential for a mineral interest and determining the commercial feasibility for mining the mineral interest would require exploration geologists, economic geologists and mining engineers to provide an intensely factual ‘so remote as to be negligible’ exception to the Treasury Regulations for a conservation easement.

The Internal Revenue Code and Treasury Regulations state that a qualified conservation easement will not be disqualified because surface mining is permitted if the probability of extraction or removal of minerals by surface mining is ‘so remote as to be negligible’. Whether

the probability of extraction of a mineral interest is 'so remote as to be negligible' is a question of fact, considering the following factors: Geological, geophysical, or economic data showing the absence of mineral interest on the property or lack of commercial feasibility of surface mining the mineral interest. The information provided by the HydroSolutions Minerals Potential Evaluation for the Lost Trail Conservation Project and Supplemental Reports do not give any intensely factual geological, geophysical, or economic data showing that at any time there will not be extraction or removal of mineral interests by any surface mining method, nor do they show the probability of surface mining occurring on the property is so remote as to be negligible, nor do they provide an intensely factual lack of commercial feasibility of surface mining the mineral interest.

With respect to the FWP Response comment stating "Unless the mineral owner would like to share the information not publicly available, FWP has to assume that the consultant's minerals potential report is correct", without disclosing specific valuable proprietary exploration data, attached please find Charles "Casey" M. Ross, Licensed Professional Geologist letters and reports dated May 5, 2020, July 30, 2020, October 13, 2020 and November 6, 2020, showing mineral information for the Lost Trail Conservation Easement Area that includes the Lost Trail Conservation Easement property currently not available to the public and Mr. Ross has provided certification of the information. Also I am attaching the Overview of Potential Surface Minerals Problem Areas for Lost Trail Acreage compiled by Whitehall Geogroup, Inc. of Whitehall, Montana, Debra Hanneman, President, dated July 28 2020, that was commissioned by the U.S. Fish and Wildlife Service for the Lost Trail Conservation Area. These reports and the information they provide certainly show that the possibility for surface mining of the Lost Trail Conservation Easement (Dredger Ridge) property is not 'so remote as to be negligible' or as stated differently, the potential of mining would be a chance which every dictate of reason would justify an intelligent person in disregarding as so highly improbable and remote as to be lacking in reason and substance.

The current prices for gold, silver, most base metals and industrial minerals are near, or at, an all-time high. As a result, the world of mining exploration has changed radically in the past year. Mining companies are raising huge sums of new money and there is a quickly improving market for minerals and the sale or leasing of mineral interest properties. This year WRH has been contacted by multiple exploration and mining groups wanting to purchase or lease various WRH mineral interest parcels. The rising prices for minerals are making mining projects once considered somewhat marginal, now commercially feasible and very profitable. Forward outlook for the price of minerals and commodities is set to rise substantially. Earlier this year Bank of

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America Corp. Raised its 18-month gold-price target to \$3,000.00 an ounce, more than 50% above the existing United States price record, in a report titled "The Fed Can't Print Gold". The United States Government recently required the Secretary of the Interior to identify critical minerals and make it the policy of the Federal Government to reduce the Nation's vulnerability to disruptions in the domestic supply chain from Reliance on Critical Minerals from Foreign Adversaries that are essential to the economic and national security of the United States, which also adds to the current increased value of minerals and mineral properties.

Because of the rising mineral values and renewed interest in mineral exploration, there are at least two very possible events that would violate the perpetuity requirement for the Lost Trail Conservation Easement property. The deeded right to buy back, or reacquire, the surface property for exploration or mining purposes may be exercised and the very definite possibility of surface mining, either of these events will violate Internal Revenue Code Section 170(h): National Perpetuity Standards For Federally Subsidized Conservation Easements and the perpetuity requirements for the Land and Water Conservation Fund and Forest Legacy Program.

With this letter please find attached copies of correspondence previously sent by WRH to the Montana Fish, Wildlife & Parks for the proposed Lost Trail Conservation Easement (Dredger Ridge) and the U.S. Fish and Wildlife Service for the proposed Lost Trail Conservation Area, that explain WRH's third-party mineral interests in more detail.

Please contact me with any questions or concerns you may have concerning this information. I would be glad to discuss this issue with you.

Sincerely,  
WRH Nevada Properties, LLC



W. R. Henderson  
Manager

WRH/tw

**Attachments:** Mitchell Chadwick Letter Dated May 5, 2020, to Montana Fish, Wildlife & Parks Addressing the Scoping Notice for Proposed Lost Trail Conservation Easement

Charles “Casey” M. Ross, Licensed Professional Geologist, Letter Dated May 5, 2020, to Montana Fish, Wildlife & Parks, Addressing the Proposed Lost Trail Conservation Easement

WRH Nevada Properties Letter to U.S. Fish and Wildlife Service Dated July 30, 2020, Addressing the Scoping Notice

Charles “Casey” M. Ross, Licensed Professional Geologist, Letter Dated July 30, 2020, to U.S. Fish and Wildlife Service Addressing the Proposed Lost Trail Conservation Area

WRH Nevada Properties, LLC Letter to U.S. Fish and Wildlife Service Dated October 15, 2020 Addressing the LPP and EA

Charles “Casey” M. Ross, Licensed Professional Geologist, Letter Dated October 13, 2020, Addressing the LPP and EA

U.S. Fish and Wildlife Service Email Response to WRH Nevada Properties, LLC Comments Dated October 19, 2020

WRH Nevada Properties, LLC Letter to U.S. Fish and Wildlife Service Dated October 30, 2020, In Response to Ben Gilles Emails Dated October 19, 2020 and October 20, 2020, and Telephone Conversations With Mr. Henderson of October 20, 2020

WRH Nevada Properties, LLC Letter to USDA Forest Service Dated November 3, 2020

Charles “Casey” M. Ross, Licensed Professional Geologist, Letter Dated November 8, 2020

Overview of Potential Surface Minerals Problem Areas for Lost Trail Acreage Compiled by Whitehall Geogroup, Inc., Whitehall, MT - Debra Hanneman, President, Dated July 28, 2020

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cc: Peter Scott, Scott-Law; [peter@scott-law.com](mailto:peter@scott-law.com)

KD Feedback; Toole & Feedback PLLC; [kdfedback@gmail.com](mailto:kdfedback@gmail.com)

Pat Patton; President; Southern Pine Plantations; [ppatton@sppland.com](mailto:ppatton@sppland.com)

James Bowditch, Esq.; Counsel to Southern Pine Plantations; Boone Karlberg P.C.;  
[jbowditch@boonekarlberg.com](mailto:jbowditch@boonekarlberg.com)

Eric Moody; Land Specialist; Southern Pine Plantations; [emoody@sppland.com](mailto:emoody@sppland.com)

Scott Stewart; National Forest Legacy Program and Community Forest Program  
Manager; U.S. Department of Agriculture; [scott.stewart@usda.gov](mailto:scott.stewart@usda.gov)

Bill Shaddox; National Park Service; Chief of Lands; [bill\\_shaddox@nps.gov](mailto:bill_shaddox@nps.gov)

Eric Alvarez; U.S. Fish and Wildlife Service; Chief of Real Estate;  
[aeric\\_alvarez@fws.gov](mailto:aeric_alvarez@fws.gov)

Kevin Shinn; U.S. Fish and Wildlife Service; Refuge Manager; [kevin\\_shinn@fws.gov](mailto:kevin_shinn@fws.gov)

Joel Lynch; National Park Service; State and Local Assistance Program;  
[joel\\_lynch@nps.gov](mailto:joel_lynch@nps.gov)

Rebecca Dockter, Esq.; Chief Legal Counsel, Montana Fish, Wildlife & Parks;  
[rdockter@mt.gov](mailto:rdockter@mt.gov)

Dick Dolan; Northern Rockies Director; The Trust For Public Land; [Dick.Dolan@tpl.org](mailto:Dick.Dolan@tpl.org)

Ben Gilles, U.S. Fish and Wildlife Service; [benjamin\\_gilles@fws.gov](mailto:benjamin_gilles@fws.gov)

Martha Williams; Director; Montana Fish, Wildlife & Parks; [Martha.Williams@mt.gov](mailto:Martha.Williams@mt.gov)

Ken McDonald; Administrator; Wildlife Division; Montana Fish, Wildlife & Parks;  
[kmcdonald@mt.gov](mailto:kmcdonald@mt.gov)

Janet Valle; Forest Legacy and Stewardship Program Manager; USDA Forest Service;  
[janet.valle@usda.gov](mailto:janet.valle@usda.gov)